

1 Laurence M. Rosen, Esq. (SBN 219683)
2 THE ROSEN LAW FIRM, P.A.
3 355 South Grand Avenue, Suite 2450
4 Los Angeles, CA 90071
5 Telephone: (213) 785-2610
6 Facsimile: (213) 226-4684
7 Email: lrosen@rosenlegal.com

8 Counsel for Plaintiff

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 BRAD CHRISTI, Individually and on
12 behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 INOGEN, INC., RAYMOND
16 HUGGENBERGER, AND ALISON
17 BAUERLEIN,

18 Defendants.

Case No:

**CLASS ACTION COMPLAINT FOR
VIOLATION OF THE FEDERAL
SECURITIES LAWS**

JURY TRIAL DEMANDED

19
20
21 Plaintiff Brad Christi, individually and on behalf of all other persons similarly
22 situated, by his undersigned attorneys, alleges in this Complaint the following upon
23 knowledge with respect to his own acts, and upon facts obtained through an
24 investigation conducted by his counsel, which included, inter alia: (a) review and
25 analysis of relevant filings made by Inogen, Inc. (“Inogen” or the “Company”) with
26 the United States Securities and Exchange Commission (the “SEC”); (b) review and
27 analysis of Defendants’ public documents, conference calls and press releases; (c)
28

1 review and analysis of securities analysts' reports and advisories concerning the
2 Company; and (d) information readily obtainable on the Internet.

3 Plaintiff believes that further substantial evidentiary support will exist for the
4 allegations set forth herein after a reasonable opportunity for discovery. Most of the
5 facts supporting the allegations contained herein are known only to Defendants or are
6 exclusively within their control.

7 8 **NATURE OF THE ACTION**

9 1. This is a federal securities class action on behalf of all persons and
10 entities, other than Defendants, who purchased or otherwise acquired Inogen
11 securities between November 12, 2014 and March 11, 2015, inclusive, (the "Class
12 Period"), seeking to recover damages caused by Defendants' violations of federal
13 securities laws (the "Class").

14 2. Inogen is a medical technology company that develops, manufactures,
15 and markets portable oxygen concentrators, which deliver supplemental oxygen
16 therapy to patients suffering from chronic obstructive pulmonary disease and other
17 respiratory conditions.

18 3. After trading closed on March 11, 2015, the Company announced that
19 management discovered potential accounting matters, which prompted an internal
20 investigation conducted by the Audit Committee and independent advisors.

21 4. On this news, the Company's stock fell \$4.24 per share or over 11%
22 from its previous closing price to close at \$33.10 per share on March 12, 2015,
23 damaging investors.

24 25 **JURISDICTION AND VENUE**

26 5. The claims asserted herein arise under and pursuant to Sections 10(b)
27 and 20(a) of the Exchange Act (15 U.S.C. § 78j(b) and 78t(a)) and Rule 10b-5
28 promulgated thereunder (17 C.F.R. § 240.10b-5).

1 (b) was directly involved in the day-to-day operations of the
2 Company at the highest levels;

3 (c) was privy to confidential proprietary information concerning the
4 Company and its business and operations;

5 (d) was involved in drafting, producing, reviewing and/or
6 disseminating the false and misleading statements and information alleged
7 herein;

8 (e) was aware of or recklessly disregarded the fact that the false and
9 misleading statements were being issued concerning the Company; and

10 (f) approved or ratified these statements in violation of the federal
11 securities laws.

12
13 15. As officers, directors, and controlling persons of a publicly-held
14 company whose common stock is and was registered with the SEC pursuant to the
15 Exchange Act, and was traded on NASDAQ and governed by the provisions of the
16 federal securities laws, the Individual Defendants each had a duty to disseminate
17 accurate and truthful information promptly with respect to the Company's financial
18 condition and to correct any previously-issued statements that had become materially
19 misleading or untrue to allow the market price of the Company's publicly-traded
20 stock to reflect truthful and accurate information.

21 16. Inogen is liable for the acts of the Individual Defendants and its
22 employees under the doctrine of respondeat superior and common law principles of
23 agency as all of the wrongful acts complained of herein were carried out within the
24 scope of their employment with authorization.

25 17. The scienter of the Individual Defendants and other employees and
26 agents of the Company is similarly imputed to Inogen under respondeat superior and
27 agency principles.
28

SUBSTANTIVE ALLEGATIONS

Defendants' Materially False and Misleading Statements During the Class Period

18. The Class Period begins on November 12, 2014 when the Company filed a materially false and misleading Form 10-Q for the quarter ended September 30, 2014 (the "2014 3rd Quarter 10-Q") with the SEC, which misstated the Company's financial statements and that its disclosure controls and procedures were effective. Furthermore, it failed to disclose material weaknesses in its internal controls over financial reporting.

19. The 2014 3rd Quarter 10-Q was signed by Defendants Huggenberger and Bauerlein. Attached to the 2014 3rd Quarter 10-Q were the Sarbanes-Oxley Act of 2002 ("SOX") certifications signed by Defendants Huggenberger and Bauerlein falsely attesting to the accuracy of the 2014 3rd Quarter 10-Q.

THE TRUTH EMERGES

20. After the markets closed on March 11, 2015, the Company issued a press release attached as an exhibit to a Form 8-K filed with the SEC. The press release announced that the Company discovered potential accounting matters prompting an internal investigation. The press release states in relevant part:

GOLETA, Calif., March 11, 2015 (GLOBE NEWSWIRE) -- Inogen, Inc. (INGN), a medical technology company offering innovative respiratory products for use in the homecare setting, today announced that *during the first quarter of 2015 certain potential accounting matters were discovered by management, which prompted the Audit Committee, with the assistance of independent advisors, to commence an internal investigation. The Audit Committee is investigating whether there were any violations of the Company's accounting policies associated with these potential accounting*

1 *matters*. The Audit Committee has not reached any conclusion
2 because of the investigation, and the Company cannot predict the
3 outcome of the investigation or when it will be completed.

4 Inogen remains confident in its strategy, top-line growth and
5 profitability and does not believe these matters will impact the
6 Company's previously stated outlook for Fiscal Year 2015 or its long-
7 term business plan. We are unable to comment on Fiscal Year 2014
8 until the investigation is completed. *The Company is postponing its*
9 *fourth quarter and fiscal year 2014 earnings release and conference*
10 *call, which had been scheduled for March 12, 2015.* Inogen will
11 announce such results as soon as practicable following the completion
12 of the Audit Committee's investigation.

13 (Emphasis added)

14 21. On this news, the Company's stock fell \$4.24 per share or over 11%
15 from its previous closing price to close at \$33.10 per share on March 12, 2015,
16 damaging investors.

17 **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

18 22. Plaintiff brings this action as a class action pursuant to Federal Rules of
19 Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all persons who
20 purchased securities of Inogen during the Class Period and who were damaged
21 thereby. Excluded from the Class are Defendants, the officers and directors of the
22 Company at all relevant times, members of their immediate families and their legal
23 representatives, heirs, successors or assigns and any entity in which Defendants have
24 or had a controlling interest.

25 23. The members of the Class are so numerous that joinder of all members is
26 impracticable. Throughout the Class Period, Inogen's common stock was actively
27 traded on NASDAQ. While the exact number of Class members is unknown to
28

1 Plaintiff at this time and can only be ascertained through appropriate discovery,
2 Plaintiff believes that there are at least hundreds of members in the proposed Class.
3 Members of the Class may be identified from records maintained by Inogen or its
4 transfer agent and may be notified of the pendency of this action by mail, using a
5 form of notice customarily used in securities class actions.

6 24. Plaintiff's claims are typical of the claims of the members of the Class,
7 as all members of the Class are similarly affected by Defendants' wrongful conduct
8 in violation of federal law that is complained of herein.

9 25. Plaintiff will fairly and adequately protect the interests of the members
10 of the Class and has retained counsel competent and experienced in class and
11 securities litigation. Common questions of law and fact exist as to all members of the
12 Class and predominate over any questions solely affecting individual members of the
13 Class. Among the questions of law and fact common to the Class are:

14 a. whether the federal securities laws were violated by Defendants'
15 acts as alleged herein;

16 b. whether the misstatements and omissions alleged herein were
17 made with scienter;

18 c. whether statements made by Defendants to the investing public
19 during the Class Period misrepresented material facts about the business and
20 operations of Inogen; and

21 d. to what extent the members of the Class have sustained damages,
22 and the proper measure of damages.

23 26. A class action is superior to all other available methods for the fair and
24 efficient adjudication of this controversy since joinder of all members is
25 impracticable. Furthermore, as the damages suffered by individual Class members
26 may be relatively small, the expense and burden of individual litigation make it
27
28

1 impossible for members of the Class to redress individually the wrongs done to them.
2 There will be no difficulty in the management of this action as a class action.

3 **Applicability of Presumption of Reliance:**

4 **Fraud on the Market Doctrine**

5 27. At all relevant times, the market for Inogen common stock was an
6 efficient market for the following reasons, among others:

7 a. Inogen's stock met the requirements for listing, and was listed and
8 actively traded on NASDAQ, a highly efficient and automated market;

9 b. During the class period, on average, over hundreds of thousands
10 of shares of Inogen stock were traded on a weekly basis, demonstrating a very
11 active and broad market for Inogen and permitting a very strong presumption
12 of an efficient market;

13 c. Inogen regularly communicated with public investors via
14 established market communication mechanisms, including through regular
15 disseminations of press releases on the national circuits of major newswire
16 services and through other wide-ranging public disclosures, such as
17 communications with the financial press and other similar reporting services;

18 d. Inogen was followed by several securities analysts employed by a
19 major brokerage firm who wrote reports that were distributed to the sales force
20 and certain customers of his/her brokerage firm during the Class Period. Each
21 of these reports was publicly available and entered the public marketplace;

22 e. Numerous FINRA member firms were active market-makers in
23 Inogen stock at all times during the Class Period; and

24 f. Unexpected material news about Inogen was rapidly reflected and
25 incorporated into the Company's stock price during the Class Period.
26
27
28

1 32. Defendants, individually and in concert, directly and indirectly, by the
2 use, means or instrumentalities of interstate commerce and/or of the mails, engaged
3 and participated in a continuous course of conduct to conceal adverse material
4 information about the business, operations and future prospects of Inogen as specified
5 herein.

6 33. These Defendants employed devices, schemes, and artifices to defraud
7 while in possession of material adverse non-public information, and engaged in acts,
8 practices, and a course of conduct as alleged herein in an effort to assure investors of
9 Inogen value and performance and continued substantial growth, which included the
10 making of, or participation in the making of, untrue statements of material facts and
11 omitting to state material facts necessary in order to make the statements made about
12 Inogen and its business operations and future prospects in the light of the
13 circumstances under which they were made, not misleading, as set forth more
14 particularly herein, and engaged in transactions, practices and a course of business
15 that operated as a fraud and deceit upon the purchasers of Inogen securities during the
16 Class Period.

17 34. Each of the Individual Defendants' primary liability, and controlling
18 person liability, arises from the following facts: (1) the Individual Defendants were
19 high-level executives, directors, and/or agents at the Company during the Class
20 Period and members of the Company's management team or had control thereof; (2)
21 each of these Defendants, by virtue of his responsibilities and activities as a senior
22 officer and/or director of the Company, was privy to and participated in the creation,
23 development and reporting of the Company's financial condition; (3) each of these
24 Defendants enjoyed significant personal contact and familiarity with the other
25 Defendants and was advised of and had access to other members of the Company's
26 management team, internal reports and other data and information about the
27
28

1 Company's finances, operations, and sales at all relevant times; and (4) each of these
2 Defendants was aware of the Company's dissemination of information to the
3 investing public which they knew or recklessly disregarded was materially false and
4 misleading.

5 35. Defendants had actual knowledge of the misrepresentations and
6 omissions of material facts set forth herein, or acted with reckless disregard for the
7 truth in that they failed to ascertain and to disclose such facts, even though such facts
8 were available to them. Such Defendants' material misrepresentations and/or
9 omissions were done knowingly or recklessly and for the purpose and effect of
10 concealing Inogen operating condition and future business prospects from the
11 investing public and supporting the artificially inflated price of its securities. As
12 demonstrated by Defendants' overstatements and misstatements of the Company's
13 financial condition throughout the Class Period, Defendants, if they did not have
14 actual knowledge of the misrepresentations and omissions alleged, were reckless in
15 failing to obtain such knowledge by deliberately refraining from taking those steps
16 necessary to discover whether those statements were false or misleading.

17 36. As a result of the dissemination of the materially false and misleading
18 information and failure to disclose material facts, as set forth above, the market price
19 of Inogen' securities was artificially inflated during the Class Period. In ignorance of
20 the fact that market prices of Inogen' publicly-traded securities were artificially
21 inflated, and relying directly or indirectly on the false and misleading statements
22 made by Defendants, or upon the integrity of the market in which the common stock
23 trades, and/or on the absence of material adverse information that was known to or
24 recklessly disregarded by Defendants but not disclosed in public statements by
25 Defendants during the Class Period, Plaintiff and the other members of the Class
26
27
28

1 acquired Inogen' securities during the Class Period at artificially high prices and
2 were or will be damaged thereby.

3 37. At the time of said misrepresentations and omissions, Plaintiff and other
4 members of the Class were ignorant of their falsity, and believed them to be true. Had
5 Plaintiff and the other members of the Class and the marketplace known the truth
6 regarding Inogen' financial results, which was not disclosed by Defendants, Plaintiff
7 and other members of the Class would not have purchased or otherwise acquired their
8 Inogen' securities, or, if they had acquired such securities during the Class Period,
9 they would not have done so at the artificially inflated prices that they paid.

10 38. By virtue of the foregoing, Defendants have violated Section 10(b) of
11 the Exchange Act, and Rule 10b-5 promulgated thereunder.

12 39. As a direct and proximate result of Defendants' wrongful conduct,
13 Plaintiff and the other members of the Class suffered damages in connection with
14 their respective purchases and sales of the Company's securities during the Class
15 Period.
16

17 40. This action was filed within two years of discovery of the fraud and
18 within five years of each plaintiff's purchases of securities giving rise to the cause of
19 action.

20 **SECOND CLAIM**

21 **Violation of Section 20(a) of** 22 **The Exchange Act Against the Individual Defendants**

23 41. Plaintiff repeats and realleges each and every allegation contained above
24 as if fully set forth herein.

25 42. The Individual Defendants acted as controlling persons of Inogen within
26 the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their
27 high-level positions, agency, ownership and contractual rights, and participation in
28 and/or awareness of the Company's operations and/or intimate knowledge of the false

1 financial statements filed by the Company with the SEC and disseminated to the
2 investing public, the Individual Defendants had the power to influence and control,
3 and did influence and control, directly or indirectly, the decision-making of the
4 Company, including the content and dissemination of the various statements that
5 Plaintiff contends are false and misleading. The Individual Defendants were provided
6 with or had unlimited access to copies of the Company's reports, press releases,
7 public filings and other statements alleged by Plaintiff to have been misleading prior
8 to and/or shortly after these statements were issued and had the ability to prevent the
9 issuance of the statements or to cause the statements to be corrected.

10
11 43. In particular, each of these Defendants had direct and supervisory
12 involvement in the day-to-day operations of the Company and, therefore, is presumed
13 to have had the power to control or influence the particular transactions giving rise to
14 the securities violations as alleged herein, and exercised the same.

15 44. As set forth above, Inogen and the Individual Defendants each violated
16 Section 10(b), and Rule 10b-5 promulgated thereunder, by their acts and omissions as
17 alleged in this Complaint.

18 45. By virtue of their positions as controlling persons, the Individual
19 Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and
20 proximate result of Defendants' wrongful conduct, Plaintiff and other members of the
21 Class suffered damages in connection with their purchases of the Company's
22 securities during the Class Period.

23 46. This action was filed within two years of discovery of the fraud and
24 within five years of each Plaintiff's purchases of securities giving rise to the cause of
25 action.
26
27
28

1 **WHEREFORE**, Plaintiff prays for relief and judgment, as follows:

2 a. Determining that this action is a proper class action, designating Plaintiff
3 as Lead Plaintiff and certifying Plaintiff as a class representative under Rule 23 of the
4 Federal Rules of Civil Procedure and Plaintiff's counsel as Lead Counsel;

5 b. Awarding compensatory damages in favor of Plaintiff and the other
6 Class members against all Defendants, jointly and severally, for all damages
7 sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial,
8 including interest thereon;

9 c. Awarding Plaintiff and the Class their reasonable costs and expenses
10 incurred in this action, including counsel fees and expert fees; and

11 d. Such other and further relief as the Court may deem just and proper.
12

13 **JURY TRIAL DEMANDED**

14 Plaintiff hereby demands a trial by jury.
15

16 Dated: March 13, 2015

Respectfully submitted,

17
18 **THE ROSEN LAW FIRM, P.A.**
19

20 /s/ Laurence Rosen

21 Laurence M. Rosen, Esq. (SBN 219683)

22 355 S. Grand Avenue, Suite 2450

23 Los Angeles, CA 90071

24 Telephone: (213) 785-2610

25 Facsimile: (213) 226-4684

26 Email: lrosen@rosenlegal.com

27 Counsel for Plaintiff
28